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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Implementation of the Subscriber Carrier)
Selection Changes Provisions of the) CC Docket No. 94-129
Telecommunications Act of 1996)
)
International Exchange Communications, Inc.)
Petition for Waiver)
)

ORDER

Adopted: September 7, 2000

Released: September 8, 2000

By the Associate Chief, Accounting Policy Division, Common Carrier Bureau:

I. INTRODUCTION AND BACKGROUND

1. In its *Carrier Change Orders*,¹ the Commission adopted rules applicable to carriers changing a consumer's preferred carrier.² In this Order, we grant International Exchange Communications, Inc. (IEComm) a limited waiver of the authorization and verification requirements of the Commission's rules and *Carrier Change Orders*.³ We grant this limited

¹ *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996 and Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Further Notice of Proposed Rule Making and Memorandum Opinion and Order on Reconsideration, 12 FCC Rcd 10674 (1997), Second Report and Order and Further Notice of Proposed Rule Making, 14 FCC Rcd 1508 (1998) (*Section 258 Order*); *stayed in part*, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. May 18, 1999); *First Order on Reconsideration*, FCC 00-135 (released May 3, 2000), 65 Fed. Reg. 47678 (August 3, 2000); *stay lifted*, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. June 27, 2000); Third Report and Order and Second Order on Reconsideration, FCC 00-255 (released August 15, 2000); *reconsideration pending*; *Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Report and Order, 10 FCC Rcd 9560 (1995), *stayed in part*, 11 FCC Rcd 856 (1995); *Policies and Rules Concerning Changing Long Distance Carriers*, CC Docket No. 91-64, 7 FCC Rcd 1038 (1992), *reconsideration denied*, 8 FCC Rcd 3215 (1993) (*PIC Change Recon. Order*); Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase I, 101 F.C.C.2d 911 (*Allocation Order*), 101 F.C.C.2d 935 (*Waiver Order*), *reconsideration denied*, 102 F.C.C.2d 503 (1985) (*Reconsideration Order*) (the *Reconsideration Order* denied reconsideration of both the *Allocation Order* and the *Waiver Order*). We refer to these orders collectively as the *Carrier Change Orders*.

² 47 C.F.R. §§ 64.1100 - 64.1190.

³ On May 4, 2000, IEComm filed a Joint Petition for Limited Waiver of Commission's Rules relating to IEComm's acquisition of the interexchange customer base of True America Communications, Inc. (True America) (Waiver Petition). On August 31, 2000, IEComm filed a Revised Supplemental Petition for Waiver (Supplement) that amended its Waiver Petition and included drafts of two customer notification letters.

waiver to the extent necessary to enable IEComm to become the preferred carrier of the consumers currently presubscribed to True America, without first obtaining the consumers' authorization and verification.

2. Section 258 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, makes it unlawful for any telecommunications carrier to "submit or execute a change in a subscriber's selection of a provider of telephone exchange service or telephone toll service except in accordance with such procedures as the Commission shall prescribe."⁴ The goal of section 258 is to eliminate the practice of "slamming," the unauthorized change of a subscriber's preferred carrier. Pursuant to section 258, carriers are absolutely barred from changing a customer's preferred local or long distance carrier without first complying with the Commission's verification procedures.⁵ In the *Section 258 Order*, the Commission revised its procedures to ensure that carriers obtain the requisite authority prior to changing a customer's preferred carrier. The Commission requires that carriers follow one of the Commission's prescribed verification procedures before submitting carrier changes on behalf of consumers.⁶

3. IEComm seeks a waiver of our verification rules to allow IEComm to be designated the preferred long distance carrier for the customers of True America without first obtaining each customer's authorization and verification. Because we conclude that, under the circumstances presented, it is in the public interest to grant the waiver, we grant IEComm a waiver, subject to the conditions represented in its filings.

II. DISCUSSION

4. Generally, the Commission's rules may be waived for good cause shown.⁷ As noted by the Court of Appeals for the D.C. Circuit, however, agency rules are presumed valid.⁸ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.⁹ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on

⁴ 47 U.S.C. § 258.

⁵ The Commission's rules and orders clearly contemplate that a switchless reseller may be a customer's preferred carrier. Therefore, changes to a customer's preferred carrier that do not involve a change in the customer's underlying facilities-based carrier are nonetheless subject to the Commission's authorization and verification rules. See *Section 258 Order* at paras. 145-146; *WATS International Corp. v. Group Long Distance (USA), Inc.*, 12 FCC Rcd 1743, 1752 (1997) (citing *PIC Change Recon. Order*, 8 FCC Rcd at 3218).

⁶ Pursuant to these procedures, a carrier must: (1) obtain the subscriber's written authorization; (2) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically; or (3) utilize an independent third party to verify the subscriber's order. See 47 C.F.R. § 64.1150.

⁷ 47 C.F.R. § 1.3.

⁸ *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), cert. denied, 409 U.S. 1027 (1972).

⁹ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

an individual basis.¹⁰ Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest.¹¹

5. We find that IECComm has demonstrated that good cause exists to justify a limited waiver of the Commission's authorization and verification requirements to the extent necessary to enable IECComm to transfer to its own customer base the affected True America customers. In the Waiver Petition, IECComm states that, on January 1, 2000, it acquired approximately 9,000 customers located in GTE and Pacific Bell exchanges in the state of California to whom True America provided interexchange services.¹² Upon discontinuance of service by True America, IECComm will provide interexchange services on a presubscription basis to the former customers of True America.

6. We conclude that special circumstances exist to justify a waiver. Without this waiver, the service of some former True America customers might temporarily be interrupted when True America ceases providing presubscribed service to customers who fail to respond in a timely fashion to requests for preferred carrier change authorization; those customers might also pay potentially higher casual calling rates after the discontinuance of presubscribed service. We conclude that a waiver of the Commission's carrier change rules and orders is necessary to provide a seamless transition with no disruption of service to the transferred customers.

7. We find that IECComm has demonstrated that a limited waiver of the authorization and verification rules is in the public interest because it will prevent the affected customers from temporarily losing service or paying significantly higher rates, and because IECComm has agreed to notify them as described below. IECComm states that it will undertake a two-step process to notify the affected customers of the transfer. In a first letter, IECComm will inform customers of the proposed transfer and assure them that no charges or rate increases will be imposed as a result of the transfer.¹³ IECComm states that it will also advise the affected customers that they can choose a different preferred carrier, should they desire to do so.¹⁴ In addition, customers will be given a toll-free number to call with any questions they may have about the transition. According to IECComm, once the proposed transfer has been consummated, IECComm will notify these customers of that event and reiterate the foregoing information, assurances, and advice.¹⁵ IECComm has agreed that, if the Commission waives its rules to permit IECComm to provide service to True America's former customers, IECComm will work with the complainants and the

¹⁰ *WAIT Radio*, 418 F.2d at 1157.

¹¹ *WAIT Radio*, 418 F.2d at 1159; *Northeast Cellular*, 897 F.2d at 1166.

¹² Waiver Petition at 2; Supplement at 1.

¹³ IECComm filed sample notification letters. See Supplement, Form Letters A and B (Notification Letters); Supplement at 1.

¹⁴ Waiver Petition at 2.

¹⁵ Notification Letters; Waiver Petition at 2; Supplement at 1.

Commission to investigate and resolve any outstanding customer complaints regarding services provided by True America.¹⁶ We conclude that these conditions will adequately protect the rights of the transferred customers of True America.

8. For the foregoing reasons, we grant IECComm a waiver of the authorization and verification requirements of our rules for the limited purposes described above. The grant of this waiver is conditioned upon IECComm's provision of customer notification and handling of customer complaints, as described above and further detailed in the Waiver Petition and Supplement.

III. ORDERING CLAUSES

9. Accordingly, pursuant to authority contained in Sections 1, 4, and 258 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 258, and the authority delegated under sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, the waiver request filed by International Exchange Communications, Inc. on May 4, 2000, and supplemented on August 31, 2000, IS GRANTED to the extent indicated herein.

10. IT IS FURTHER ORDERED that this Order is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

K. Michele Walters

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Associate Chief,
Accounting Policy Division,
Common Carrier Bureau

¹⁶

Waiver Petition at 2.